

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

MASIMO CORPORATION,  
a Delaware corporation; and  
CERCACOR LABORATORIES, INC.,  
a Delaware corporation,

Plaintiffs,

v.

APPLE INC.,  
a California corporation,

Defendant.

CASE NO. 8:20-cv-00048-JVS (JDEx)

PROTECTIVE ORDER

Based on Plaintiffs' Motion for Protective Order (Dkt. 61, "Motion"), the Joint Stipulation of the parties (Dkt. 61-1), the evidence submitted in support of and in opposition to the Motion (Dkt. 61-2 to 61-5), including the parties' respective proposed protective orders (Dkt. 61-2, Exh. 2, and Dkt. 61-5, Exh. A), and the June 23, 2020 Order by the Honorable Judge James V. Selna, United States District Judge (Dkt. 59), and good cause appearing therefor, the Motion is granted, in part, and the Court finds and orders as follows.

1 (f) professional jury or trial consultants, mock jurors, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this  
3 Action and who have signed the “Acknowledgment and Agreement to Be  
4 Bound” (Exhibit A);

5 (g) the author, recipient, or custodian of a document containing the  
6 information, or any other individual who appears to have had access to  
7 the specific information at issue based on the face of the document, the  
8 document’s metadata, other documents, or sworn witness testimony;

9 (h) any mediators or settlement officers and their supporting  
10 personnel, mutually agreed upon by any of the parties engaged in settlement  
11 discussions;

12 (i) any other person with the prior written consent of the Producing  
13 Party; and

14 (j) during their depositions, witnesses, and attorneys for witnesses,  
15 in the Action to whom disclosure is reasonably necessary provided: (1) the  
16 deposing party requests that the witness sign the form attached as Exhibit A  
17 hereto; and (2) they will not be permitted to keep any confidential information  
18 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit  
19 A), unless otherwise agreed by the Designating Party or ordered by the court.  
20 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
21 Protected Material may be separately bound by the court reporter and may not  
22 be disclosed to anyone except as permitted under this Protective Order. If a  
23 Designating Party believes a party is not acting in good faith in seeking to show  
24 Protected Material to a witness during a deposition, the Designating Party may  
25 seek a further protective order under Local Rule 37 to prevent the showing of  
26 Protected Material to the witness, with the Designating Party bearing the burden  
27

1 of proof to show that the party seeking to show Protected Material to a witness  
2 during a deposition is not acting in good faith.

3 9.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” Information or Items. Unless otherwise ordered by the court or  
5 permitted in writing by the Designating Party, a Receiving Party may disclose  
6 any information or item designated “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY” only to the individuals identified in Paragraphs  
8 9.2 (a), (c)-(i), who are not competitive decision-makers of a Party as defined by  
9 applicable authorities.

10 10. PROSECUTION BAR


11 After the adoption of this provision by the parties, Outside Counsel of  
12 Record and any person associated with a Party who receive a Producing Party’s  
13 material designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
14 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” under this  
15 Protective Order who accesses or otherwise learns of, in whole or in part, said  
16 material designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” under this  
18 Protective Order shall not prepare, prosecute, supervise, advise, counsel, or  
19 assist in the preparation or prosecution of any patent application seeking a  
20 patent on behalf of the Receiving Party or its acquirer, successor, or predecessor  
21 in the field of non-invasive monitoring during the pendency of this Action and  
22 for two years after final termination of this action. To avoid any doubt,  
23 “prosecution” as used in this paragraph does not include representing or  
24 advising a Party before a domestic or foreign agency in connection with a  
25 reissue, ex parte reexamination, covered business method review, *inter partes*  
26 review, opposition, cancelation, or similar proceeding; though in connection  
27 with any such agency proceeding involving the patents-in-suit, Outside Counsel

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2 18. VIOLATION

3 Any violation of this Order may be punished by appropriate measures  
4 including, without limitation, contempt proceedings and/or monetary sanctions.

5 **IT IS SO ORDERED.**

6  
7 Dated: June 30, 2020

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9 JOHN D. EARLY  
United States Magistrate Judge